

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X

RAFAEL MONTANEZ,

Plaintiff,

-against-

**NOTICE OF APPLICATION
FOR COSTS AGAINST
PLAINTIFF**

CITY OF NEW YORK, COMMISSIONER RAYMOND
KELLY, LT. VALENTI, DR. MILLER, DEPUTY
INSPECTOR CIRABIS and LT. PACE, sued in their
individual and professional capacities,

CV 09-5652 (SJ) (SMG)

Defendants.

----- X

PLEASE TAKE NOTICE that, upon defendants' bill of costs, the Declaration of Daniel Gomez-Sanchez, dated July 25, 2012, and the exhibits annexed thereto, and all other pleadings and proceedings herein, defendants will move this Court before the Judgment Clerk, at the United States Courthouse, for the Eastern District of New York, located at 225 Cadman Plaza East, Brooklyn, New York on August 3, 2012 at 10:00 A.M. or as soon thereafter as counsel may be heard for an order pursuant to Rule 54 of the Federal Rules of Civil Procedure and 28 U.S.C. §§1921 and 1920 granting fees and costs sought by defendants and granting such other relief that

this Court deems proper.

Dated: New York, New York
July 25, 2012

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendants
100 Church Street, Room 2-144
New York, New York 10007
(212) 788- 0883
dgomez@law.nyc.gov

By: /s/
Daniel Gomez-Sanchez
Assistant Corporation Counsel

TO: Dominick Peter Revellino, Esq.
Linda M Cronin, Esq.
Rocco G Avallone, Esq.
Cronin & Byczek, LLP
1983 Marcus Avenue, Suite C-120
Lake Success, New York 11042

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAFAEL MONTANEZ,

Plaintiff,

-against-

CITY OF NEW YORK, COMMISSIONER RAYMOND
KELLY, LT. VALENTI, DR. MILLER, DEPUTY
INSPECTOR CIRABIS and LT. PACE, sued in their
individual and professional capacities,

Defendants.
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**DECLARATION OF
DANIEL GOMEZ-
SANCHEZ IN SUPPORT
OF DEFENDANTS'
APPLICATION FOR
COSTS AGAINST
PLAINTIFF**

CV 09-5652 (SJ) (SMG)

DANIEL GOMEZ-SANCHEZ, declares pursuant to 28 U.S.C. §1746 and under penalty of perjury that:

1. I am an Assistant Corporation Counsel in the Office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for defendants in this action. I am familiar with the facts and circumstances set forth herein.

2. This Declaration is submitted in support of defendants' Bill Of Costs and application for an award of costs against Darrel Keith Williams in this action.

3. Plaintiff commenced this action by filing a complaint on December 28, 2009, alleging, inter alia that defendants discriminated and retaliated against plaintiff under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e, et seq., and 42 U.S.C. §1983, as well as 3 state law claims.

4. The matter was resolved by summary judgment in favor of defendants on June 27, 2012. A copy of the judgment is attached hereto as Exhibit "A."

5. Defendants are entitled to costs as prevailing party pursuant to Rule 54(d)(1) of the Federal Rules of Civil Procedure, and Rule 54.1(c)(2) of the Local Civil Rules of the Eastern District of New York, insofar as summary judgment was entered in favor of defendants on all claims.

6. Attached hereto as Exhibit "B" is the Bill of Costs, dated July 25, 2012, for a total of \$782.

7. The costs claimed are correctly stated, are allowable by law, and were necessarily incurred as stated herein.

8. Defendants submit a bill for the cost of plaintiff Rafael Montanez's deposition transcript that was necessary for use in preparing defendants' motion for summary judgment. A true copy of the invoices from the stenographer is annexed hereto as Exhibit "C." As indicated, the total cost of that deposition is \$782.

WHEREFORE, it is respectfully requested that the Clerk issue an order granting defendants costs in the amount of \$782.

Dated: New York, New York
July 25, 2012

/s/

Daniel Gomez-Sanchez
Assistant Corporation Counsel

EXHIBIT A

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D.N.Y.
★ JUN 27 2012 ★
BROOKLYN OFFICE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
RAFAEL MONTANEZ,

Plaintiff,

-against-

CITY OF NEW YORK, COMMISSIONER RAYMOND
KELLY, LT. VALENTI, DR. MILLER, DEPUTY
INSPECTOR CIRABIS and LT. PACE, sued in their
individual capacities,

Defendants.
-----X

A Memorandum and Order of Honorable Sterling Johnson, Jr., United States

District Judge, having been filed on June 22, 2012, granting Defendants' motion to dismiss; and
dismissing the complaint; it is

ORDERED, ADJUDGED AND DECREED that Defendants' motion to dismiss
is granted; and that the complaint is dismissed.

Dated: Brooklyn, New York
June 25, 2012

Douglas C. Palmer
Clerk of Court

by:

/s/(MG)

Michele Gapinski
Chief Deputy for
Court Operations

EXHIBIT B

AO 133

(Rev. 8/06) Bill of Costs

UNITED STATES DISTRICT COURT

EASTERN

District of

NEW YORK

Rafael Montanez,

Plaintiff,

BILL OF COSTS

V.

City of New York, et al.,

Defendants.

Case Number: CV 09-5652 (SJ)(SMG)

Judgment having been entered in the above entitled action on 6/27/2012 against Plaintiff Rafael Montanez,
 the Clerk is requested to tax the following as costs:

Fees of the Clerk	\$ _____
Fees for service of summons and subpoena	_____
Fees of the court reporter for all or any part of the transcript necessarily obtained for use in the case	_____
Fees and disbursements for printing	_____
Fees for witnesses (itemize on page two)	0.00
Fees for exemplification and copies of papers necessarily obtained for use in the case	_____
Docket fees under 28 U.S.C. 1923	_____
Costs as shown on Mandate of Court of Appeals	_____
Compensation of court-appointed experts	_____
Compensation of interpreters and costs of special interpretation services under 28 U.S.C. 1828	_____
Other costs (please itemize)	782.00
TOTAL	\$ 782.00

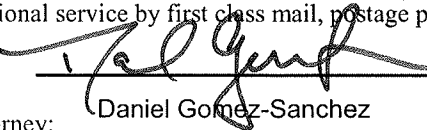
SPECIAL NOTE: Attach to your bill an itemization and documentation for requested costs in all categories.

DECLARATION

I declare under penalty of perjury that the foregoing costs are correct and were necessarily incurred in this action and that the services for which fees have been charged were actually and necessarily performed. A copy of this bill has been served on all parties in the following manner:

- ☐ Electronic service by e-mail as set forth below and/or.
- ☐ Conventional service by first class mail, postage prepaid as set forth below.

s/ Attorney:



Name of Attorney:

Daniel Gomez-Sanchez

For: The City of New York, et al.

Date: 7/25/2012

Name of Claiming Party

Costs are taxed in the amount of _____ and included in the judgment.

Clerk of Court

By:

Deputy Clerk

Date

UNITED STATES DISTRICT COURT

WITNESS FEES (computation, cf. 28 U.S.C. 1821 for statutory fees)							
NAME , CITY AND STATE OF RESIDENCE	ATTENDANCE		SUBSISTENCE		MILEAGE		Total Cost Each Witness
	Days	Total Cost	Days	Total Cost	Miles	Total Cost	
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
							\$0.00
					TOTAL		\$0.00

NOTICE

Section 1924, Title 28, U.S. Code (effective September 1, 1948) provides:

"Sec. 1924. Verification of bill of costs."

“Before any bill of costs is taxed, the party claiming any item of cost or disbursement shall attach thereto an affidavit, made by himself or by his duly authorized attorney or agent having knowledge of the facts, that such item is correct and has been necessarily incurred in the case and that the services for which fees have been charged were actually and necessarily performed.”

See also Section 1920 of Title 28, which reads in part as follows:

"A bill of costs shall be filed in the case and, upon allowance, included in the judgment or decree."

The Federal Rules of Civil Procedure contain the following provisions:

Rule 54 (d)

“Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs, but costs against the United States, its officers, and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day’s notice. On motion served within 5 days thereafter, the action of the clerk may be reviewed by the court.”

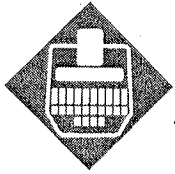
Rule 6(e)

“Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the prescribed period.”

Rule 58 (In Part)

"Entry of the judgment shall not be delayed for the taxing of costs."

EXHIBIT C



Diamond Reporting, Inc.

16 Court Street • Suite 907 • Brooklyn, NY 11241
T: 718.624.7200 • F: 718.855.1772 • www.diamondreporting.com

Fee

NEW YORK CITY LAW DEPARTMENT
PIN # 02507X100A17
100 CHURCH STREET, FISCAL SECTION-ROOM 5-121
NEW YORK, NY 10007
DANIEL GOMEZ-SANCHEZ, ESQ.

INVOICE NO.: 10112309201

INVOICE DATE: 12/22/2010

REPORTER:
JACKIE MAGNICCARI

MONTANEZ, RAFAEL VS CITY OF NEW YORK, RAYMOND
KELLY, POLICE COMMISSIONER OF NYC PD, ETAL
INDEX NO: 09-CV-05652-SJ FILE NO: 2010-002101 -LE

TAX ID #: 11-266-5545

BILLER ID: SS

DATE	DESCRIPTION	AMOUNT
11/23/2010	EXAM. BEFORE TRIAL OF THE PLF., RAFAEL MONTANEZ 176PP+ 24PGS OF W.I. ORIGINAL & 2 COPIES - YOUR CHARGE APPEARANCE (AM & PM) YOUR CHARGE CONTROL #:KKK09393	<i>\$3.65</i> 730.00 52.00
SUB TOTAL		\$782.00
PAID		\$0.00
BALANCE DUE		\$782.00

I certify that the articles and services
specified on this invoice have been received and
verified as to quality and quantity.

Signature *Jackie Magniccari*

Date *12/23/10*

VOUCHERED
DATE: *01/12/11*

Case # *2010-002101* INV. AMT. PAID: \$ *782.00*

V# *11-3292*

INV. # *10112309201*

SVS. PERIOD *11/23/10 TO 11/23/10*

** PLEASE NOTE PAYMENT TERMS ARE NET 30 DAYS **
WE ACCEPT AMERICAN EXPRESS, VISA AND MASTERCARD
PLEASE NOTE INVOICE NUMBER ON YOUR PAYMENT - THANK YOU

025 : D/C *0201* : DET. OBJ. *6220*

ORIGINAL INVOICE

REF. DOC. *CT 0252011419637*

DIAMOND DEPOSITION CENTERS

Make checks payable to: Diamond Reporting, Inc.

☐ Visa ☐ MC ☐ Amex ☐ Check

Credit Card #: _____

Exp. Date: _____ Security Code: _____

Name on Card: _____

New York Offices:
Manhattan, Brooklyn, Bronx,
Queens, Staten Island,
Mineola, White Plains
.....
New Jersey Offices:
Hackensack, Marlton

RECEIVED
FISCAL UNIT
NYC LAW DEPT
JAN 5 PM 2:13

DEC 23 PM 9:35

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RAFAEL MONTANEZ,

Plaintiff,

-against-

**DECLARATION
OF SERVICE**

CV 09-5652 (SJ) (SMG)

CITY OF NEW YORK, COMMISSIONER RAYMOND
KELLY, LT. VALENTI, DR. MILLER, DEPUTY
INSPECTOR CIRABIS and LT. PACE, sued in their
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Defendants.
----- X

Winston S. Tse, declares, pursuant to 28 U.S.C. § 1746 and subject to the penalties of perjury, that on July 25, 2012, he served a true and correct copy of the foregoing Notice Of Defendant's Application For Costs Sought Against Plaintiff, the Declaration Of Daniel Gomez-Sanchez In Support Of Defendants' Application For Costs Against Plaintiff and annexed exhibits upon the following:

Dominick Peter Revellino, Esq.
Linda M Cronin, Esq.
Rocco G Avallone, Esq.
Cronin & Byczek, LLP
1983 Marcus Avenue, Suite C-120
Lake Success, New York 11042

By depositing a copy enclosed in a properly prepaid mail wrapper to the above address in a post office box in the Borough of Manhattan, City of New York, regularly maintained by the Government of the United States in said City.

I declare under penalties of perjury that the foregoing is true and correct.

Dated: New York, New York
July 25, 2012



Winston S. Tse

Index No. CV 09-5652 (SJ) (SMG)

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EASTERN DISTRICT OF NEW YORK

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Plaintiff,

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MILLER, DEPUTY INSPECTOR CIRABIS and
LT. PACE, sued in their individual and professional
capacities,

Defendants.

**NOTICE OF APPLICATION FOR COSTS,
BILL OF COSTS, AND DECLARATION OF
DANIEL GOMEZ-SANCHEZ IN SUPPORT
OF DEFENDANTS' APPLICATION FOR
COSTS AGAINST PLAINTIFF AND
ANNEXED EXHIBITS**

MICHAEL A. CARDOZO

*Corporation Counsel of the City of New York
Attorney for Defendants
100 Church Street; Room 2-144
New York, N.Y. 10007*

*Of Counsel: Daniel Gomez-Sanchez
Tel: (212) 788-0883
NYCLIS No. 2010-002101*

Due and timely service is hereby admitted.

New York, N.Y., 200...

..... Esq.

Attorney for.....